

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)

v.)

JOSE BENCOMO-CASTILLO)

NO. 3:11-cv-00621
JUDGE HAYNES

**GOVERNMENT'S RENEWED MOTION TO DENY AND DISMISS
PETITIONER'S UNTIMELY MOTION TO VACATE**

Comes now the government:

Petitioner previously filed a *pro se* motion to vacate pursuant to Title 28 U.S.C. § 2255.

(D.E. 1). He conceded therein that the motion was untimely, but claimed equitable tolling was justified. The government, with leave of Court, filed a preliminary response to the motion, opposing equitable tolling and moving to dismiss the action as untimely. (D.E. 10). The Court appointed counsel to represent petitioner in this matter and denied the government's motion to dismiss, without prejudice to renew it following amended pleadings on behalf of petitioner.

(D.E. 12). Now, after the passage of almost another year, an amended motion to vacate has been filed by appointed counsel. (D.E. 25).

In his amended motion, petitioner asserts that the judgment and sentence should be vacated because his trial attorney (1) failed to adequately advise petitioner regarding the acceptance of an 18 year plea offer that was allegedly conveyed by the government; and (2) failed to provide petitioner with adequate Spanish translations during a portion of the trial. (D.E. 25 at p. 10 and 13). The government contests these assertions and disagrees that they provide a lawful basis to grant the relief requested. However, the government submits that the Court need

ORDER

This motion is DENIED without prejudice to renew after a evidentiary hearing. The Court finds that a hearing is necessary given the

movant's limited education and language skills. Counsel for the parties have 20 days to submit an agreed order with a hearing date and time.

W. J. J. J.
NSP
2-21-13